IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-8-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.220 of 2000

State by:
Public Prosecutor
High Court, Madras. .. Appellant

vs

1.Subramaniam
2.Sasikumar
3.Periyasamy @ Ravi .. Respondents/Accused

Criminal appeal filed under Sec.378 of the Code of Criminal Procedure against the judgment of the II Additional Sessions Judge, Erode, in S.C.No.42 of 1999 dated 9.8.1999.

For Appellant : Mr.V.M.R.Rajendran
Additional Public Prosecutor

For Respondents : Mr.B.Kumarasamy

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

Aggrieved over the judgment of acquittal by the Court of the II Additional Sessions, Erode, the State has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal could be stated thus:

(a) P.W.1 is the son of the deceased Ramasamy Goundar. P.W.1 was living with his family members including his father, in Sappalankattu Thottam, Arachalur. On the western side of the said thottam, the accused were living with their family. The deceased was owning lands on the northern side in Malangadu, where there was a thatched house. P.W.3 Pappathi, was living there. She was the kept mistress of the deceased. It was the usual practice for the deceased to leave from the house of P.W.1 at about 8.00 P.M. every day, stay over in the house of P.W.3 and

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

come back to P.W.1's house the next day. There were long standing enmity between the accused and P.W.1's family. There was a complaint given by the accused to the Electricity Board, saying that the deceased had cut the electric connection given to the house of the first accused. Following the same, the Engineer attached to the Electricity Board made an inspection and found it to be false. A few days prior to the occurrence, 5 or 6 chickens belonging to the first accused, died out of poisoning. The first accused suspected that it was the act of the deceased. Therefore, he decided to do away with him the same way.

(b) On the date of occurrence namely 20.4.1997, the Sunday, a neighbour belonging to the same community died. At about 8.00 P.M., as usual, the deceased took his food, went over to the house of P.W.3 and came back to the house of the said neighbour in order to convey his condolence. At that time, these three accused were witnessed by P.W.4 near the culvert of LBP Canal. Within a short time, she heard the distressed cry of the deceased, and since she alone was in her house, she did not come out of the house. The deceased did not come back to the house of P.W.1. The next morning, when the deceased was not found, P.W.1 proceeded to Arachalur Police Station and gave a report Ex.P1, to P.W.14 the Head Constable, attached to the said Police Station, who registered a case in Crime No.150/97 for man missing. Printed First Information Report Ex.P27, was sent to Court.

(c) P.Ws.1 and 2 were searching for the deceased. At about 1.00 P.M. on 21.4.1997, a trunk of a dead body was found floating in the water near LBP canal, and they brought it out. P.W.3 was informed about the same. She also identified the dead body as that of the deceased. M.Os.1 and 2 rings, worn by the deceased, were found. M.O.3 was a cycle belonging to the deceased. At about 1.30 P.M., P.W.2 went to the Police Station and informed about the said fact. P.W.17 the Inspector of Police, on receipt of Ex.P8 the report, from P.W.2, altered the case to one under Sec.302 of I.P.C. Then, he took up the case for investigation, proceeded to the scene of occurrence, made an inspection in the presence of two witnesses and prepared Ex.P9 the observation mahazar, and Ex.P31 the rough sketch. Photographs were taken, and the photos were marked as Ex.P33 series, and its negatives were marked as Ex.P32 series. The Investigating Officer conducted inquest on the trunk in the presence of witnesses and panchayatdars and prepared Ex.P34 the inquest report.

(d) Pursuant to a requisition forwarded by the Investigating Officer, P.W.11 the Civil Assistant Surgeon, attached to the Government Hospital, Erode, conducted autopsy on the trunk of the dead body and found the following signs:

> "The head is completely missing from the root of the neck exposing all the structures of the root of the neck. Trachiea, Oesophagus, blood vessels, spinal cord and with cut vertebrae are exposed. The edges of the wound are clear cut."

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

The Doctor had issued Ex.P17 the postmortem certificate, and had opined that the deceased would appear to have died of the respiratory arrest due to the decapitation of the head about 16 to 24 hours prior to autopsy.

(e) During investigation, the first and the second accused were arrested on 23.4.1997 in the presence of P.W.7 the Village Administrative Officer, and other witness. First accused volunteered to give a confessional statement. The admissible portion is marked as Ex.P35. A-2 also gave a confessional statement, and the admissible portion is marked as Ex.P36. Pursuant to the confessions, A-1 produced M.O.6 aruval and A-2 produced M.O.3 cycle, and they were recovered under Exs.P11 and P12 the mahazars, respectively. A-3 surrendered before the Judicial Magistrate. On a requisition made by the Investigating Officer, the police custody was ordered. He took A-3 to custody on 28.4.1997. Then, A-3 gave a confessional statement. The admissible portion is marked as Ex.P37, pursuant to which he produced M.O.7 iron wire, and the same was recovered under Ex.P13 the mahazar. A-1 to A-3 immediately after the occurrence, met P.W.6, and at that time, A-1 made a confession to P.W.6 that it was he who murdered the deceased. All the material objects recovered from the place of occurrence and from the dead body, and the material objects produced by the accused and recovered by the Investigating Officer, pursuant to the confessional statements were subjected to chemical analysis, which resulted in Ex.P20 the Chemical Analyst's report, and Exs.P21 and P22 the Serologist's reports. On completion of investigation, the final report was filed against the respondents/accused.

3. Thereafter, the case was committed to Court of Session, and necessary charges were framed against the accused namely under Sec.302 I.P.C. against A-1, under Sec.302 read with 34 I.P.C. against A-2 and A-3 and under Sec.201 read with 34 I.P.C. against A-1 to A-3.

4. In order to substantiate the charges levelled against the respondents/accused, the prosecution marched 17 witnesses and relied on 38 exhibits and 11 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. No defence witnesses were examined. The trial Court, after hearing the arguments advanced by either side and on scrutiny of the materials, recorded a finding that the prosecution has not proved the case beyond reasonable doubt and acquitted the accused. Aggrieved over the said judgment, the State has brought forth this appeal.

https://hcservices.ecourts.gov.in/hcservices/

5. The learned Additional Public Prosecutor appearing for the State, would submit that the lower Court has acquitted the

accused without proper perception of the evidence adduced by the prosecution before the trial Court; that in the instant case, it is true that the prosecution had no direct evidence to offer; but, there were sufficient circumstances to prove its case; that the deceased left the house of P.W.1 at 8.00 P.M. and went to the house of P.W.3 at about 8.30 P.M.; that according to the witnesses, the deceased was also going near the house of P.W.3, and the next day, a trunk of a dead body was found; that it is pertinent to note that after the occurrence, A-1 met P.W.6 and confessed about the occurrence; that apart from that, pursuant to the confessional statements, the weapons of crime have also been recovered; that in the instant case, the lower Court has accepted the defence theory erroneously; that when the circumstances which were sufficient to prove the guilt of the accused, were placed and proved also, the lower Court should have accepted the case of the prosecution and found them guilty, and hence, the judgment of the lower Court has got to be set aside, and they have got to be dealt with in accordance with law.

6. The Court heard the learned Counsel for the respondents on the above contentions.

7. It is not in controversy that the father of P.W.1 died out of homicidal violence. The trunk of the dead body was found. Following the inquest, it was subjected to postmortem by P.W.11 the Doctor, attached to the Government Hospital, and he has also issued a postmortem certificate Ex.P17, wherein he has opined that the deceased died out of the respiratory arrest due to the decapitation of the head. Thus, the prosecution was successful enough to produce the trunk of the dead body and proved that the death has ensued on account of the respiratory arrest due to the decapitation of the head. At this juncture, it has to be pointed out that the question as to the very identity of the deceased was raised before the lower Court in the defence by the respondents/accused, and the lower Court has marshalled the evidence properly and found that the prosecution has failed to prove the same.

8. In the instant case, it is not in dispute that a complaint was given by P.W.1 to P.W.13 the Head Constable, and a case came to be registered under Sec.174 of Cr.P.C. It remains to be stated that at about 1.30 P.M., P.W.2 had gone to the Police Station and gave another report under Ex.P8, stating that a trunk of the dead body was found floating in the water near LBP Canal. Pursuant to the said report, the Investigating Officer, altered the case to Sec.302 of I.P.C., and he also accompanied P.W.2 and went to the spot. From the evidence of P.W.2, it would be clear that P.W.1 was also present at that time; but, either in the First Information Report or in Ex.P8 report, the physical features were not at all mentioned. It is the evidence of P.Ws.1 to 3 that the deceased was wearing a copper ring in one hand; but, two copper rings were found in the dead body. Apart from that, they would further add that there was a scare on the left

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

wrist and a deformity in his left leg. According to P.W.11 the Doctor, who conducted postmortem, those identification marks were not found on the dead body. According to the witnesses, they were not actually noticed at the time of the postmortem. That apart, those identification marks were not at all mentioned either in the First Information Report or in Ex.P8 report, and subsequently, they have been introduced in order to suit the situation at the time of postmortem.

9. Another circumstance which casts a doubt on the prosecution case, was the time of death. According to the witnesses, the death should have taken place at about 8.00 or 8.30 P.M. But, as per the opinion given by the Doctor, who conducted autopsy, he should have died about 16 to 24 hours prior to autopsy, and partly digested rice particles were found in the stomach. It is the evidence of P.W.1 that the deceased took food in his house at 8.00 P.M. and proceeded to the house of P.W.3. Under the circumstances, it has got to be taken that death could not have taken place as put forth by the prosecution. Thus, the prosecution could not establish that the trunk of the dead body what was found at the scene of occurrence, was that of the deceased. Even as per the postmortem certificate, death would have occurred long prior to autopsy. These infirmities in the prosecution case were noticed by the lower Court.

10. In the instant case, the prosecution much relied on the extra-judicial confession made to P.W.6 by A-1. It has to be pointed out that even as per the prosecution case, three were the assailants, and they caused injuries to the deceased. According to P.W.6, the accused came to him, and A-1 confessed that it was he who committed the murder. The evidence of P.W.6 was not free from any doubts. Under the circumstances, the extra-judicial confession which according to P.W.6 was made by A-1 to him, is thoroughly doubtful. Thus, the prosecution has neither placed any circumstances connecting the accused with the crime, nor proved the same with sufficient evidence. In a case where the trunk of the dead body which was found and subjected to autopsy, was not that of the deceased, it cannot but be stated that the prosecution has miserably failed to prove its case, because there was a specific accusation against the accused that they caused the death of a particular person; but, the said dead body was not that of the particular person. Under the circumstances, at no stretch of imagination, it can be stated that the prosecution has proved the charges, and thus, the prosecution has miserably failed to prove the same.

11. In view of the above reasons, the lower Court was perfectly correct both factually and legally in acquitting the accused, which finding has got to be sustained by this Court. This Court is unable to notice any reason to interfere in the judgment of the lower Court. Accordingly, the judgment of the lower Court acquitting the respondents/accused is confirmed.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

12. In the result, this criminal appeal fails, and the same is dismissed.

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:
1) The II Additional Sessions Judge, Erode.
2) The Ii Additional Sessions Judge, Erode,
   Through the Principal Sessions Judge, Erode.
3) The District Collector, Erode.
4) The Director General of Police, Mylapore, Chennai 4.
5) The Superintendent, Central Prison, Coimbatore.
6) The Public Prosecutor, High Court, Madras.
7) The Inspector of Police,
   Arachalur Police Station, Erode District.

+1 CC to Mr.B.Kumarasamy, Advocate, SR No.34650

PSI(CO)
BG/22.08.2005.

C.A.No.220 of 2000

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/